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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS Office
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: EAC-99-076-51073 Office: Vermont Service Center Date: MAY 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion to reopen and reconsider was dismissed, and the previous decision of the AAO was affirmed. The matter is again before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner, an international airline, seeks to employ the beneficiary temporarily in the United States as its catering manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel argued that the beneficiary managed the catering function of the airline. Counsel stated that the beneficiary's functional responsibilities included dealing with a variety of suppliers and contracting with them, as well as directing a large staff.

The AAO dismissed the appeal, reasoning that the petitioner had not provided sufficient evidence of the length of the beneficiary's employment abroad, a detailed description of the beneficiary's United States employment, or evidence that the beneficiary had been or would be performing at a senior level within the organization. Consequently, the AAO concluded that the petitioner had not established that the beneficiary had been or would be employed in the United States in a primarily managerial or executive capacity.

On first motion, counsel contended that:

> The position of catering manager is a managerial position. Overseas, [the beneficiary] was in charge of over 200 employees and will be in charge of a large operation in the United States. The catering function is an important function of the Airline and [the beneficiary] is not merely a first line manager.

The AAO dismissed the motion reasoning that the evidence submitted by the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On second motion, Counsel states that:

> We herewith request that the decision of the AAU be reconsidered in as much as they failed to consider the fact that the alien is in charge of all functions of the Airline and, as such, is eligible for the L-1.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for

a new trial on the basis of newly discovered evidence. INS v. Doherty, *supra* at 323 (citing INS v. Abudu, 485 U.S. at 107-108). A party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, *supra* at 110.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2)

Regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4)

On second motion, counsel does not submit any documentation that would meet the requirements of a motion to reconsider. Counsel does not state any established reason for reconsideration nor cite any precedent decisions in support of a motion to reconsider. Further, counsel does not argue that the previous decisions were based on an incorrect application of the law or Service policy. Counsel merely expands a restated position.

Inasmuch as the motion fails to state the new facts to be provided, and is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.